



March 4, 2019

MuckRock News
DEPT MR 56576
411A Highland Ave
Somerville, MA 02144-2516

RE: 2019-ICAP-00165, 2018-ICFO-45234

Dear MuckRock News:

This is in response to your letter dated December 5, 2018 addressed to General Counsel of the Department of Homeland Security. Your letter was received by ICE on December 19, 2018, appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your FOIA request, dated June 22, 2018, seeking "memos, e-mails, letters, documents, damage assessments and other reports mentioning or relating to 'ICE Patrol', the wikileaks publication of ICE employee's information. Please include in but do not limit the response to materials on prior publications by Sam Lavigne."

On August 22, 2018, the ICE FOIA Office advised you in an e-mail that your June 25, 2018 request for records is on hold pending clarification. The ICE FOIA Office stated that your request is unclear as to what is being requested and further suggested you reword your request. The ICE FOIA Office advised you to resubmit your reworded request within 30 days of the August 22, 2018 e-mail to avoid ICE administratively closing the request. Thereafter, the following day you indicated that you needed further clarification from the ICE FOIA Office as to why your June 25, 2018 request was unclear. On September 24, 2018 the ICE FOIA Office sent a second e-mail to you reiterating that your June 25, 2018 request was on hold pending clarification. The ICE FOIA Office provided an additional 30 days from September 24, 2018 to respond with clarification before ICE would administratively close your request. Thereafter, on November 13, 2018 the ICE FOIA Office sent an e-mail to you advising that due to lack of clarification your June 25, 2018 request, it was administratively closed. You have appealed the ICE FOIA Office's administrative closure of your June 25, 2018 FOIA request.

Under 5 U.S.C. section 552(a)(3)(A), a requester must reasonably describe the requested records. 5 U.S.C. § 552(a)(3)(A). A request reasonably describes records if "the agency is able to determine precisely what records are being requested." *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 326 (D.C. Cir. 1982). The key to determining whether a request is "reasonably described" is the agency's ability to reasonably ascertain exactly which records are being requested and to locate them. *Id.* As such, a requester must describe the records sought in enough detail to enable agency

personnel to locate them with a reasonable amount of effort. Whenever possible, the request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. 6 C.F.R. § 5.3.

Broad, sweeping requests lacking specificity are not sufficient. *American Fed. of Gov't Employees v. Dep't of Commerce*, 632 F. Supp. 1272, 1277 (D.D.C. 1986). A request that seeks “any and all records” is overly broad because the agency cannot locate with reasonable effort the specific documents requested. *Dale v. Internal Revenue Serv.*, 238 F. Supp.2d 99, 104 (D.D.C. 2002). Moreover, a request that describes in general a type of record, but the contours of the records thus described are so broad in the context of the agency’s files, is not a request that reasonably describes identifiable records. *Irons v. Schuyler*, 465 F.2d 608, 609-10 (D.C. Cir. 1972).

After careful review of your FOIA request, ICE has determined that your request is overly broad and sweeping and as such does not reasonably describe identifiable records. Your request for “memos, e-mails, letters, documents, damage assessments and other reports mentioning or relating to ‘ICE Patrol’, the wikileaks publication of ICE employee’s information,” is so broad that it does not enable an employee of the agency to find all files regarding this information with a reasonable amount of effort. *See e.g., Roman v. C.I.A.*, No. 11-CV-5944, 2013 WL 210224, at *6 (E.D.N.Y. Jan. 18, 2013) (request for “all files/and or reports” not specific enough for an employee of the agency to find all files regarding this information with a reasonable amount of effort). Moreover, as you have requested records not just relating to, but also merely mentioning, ICE Patrol, you are essentially requesting the agency to search virtually all documents contained in all branch and division offices. Your request is not limited in any way and thus does not reasonably describe the sought-after records with any sort of particularity. FOIA requires that a request “reasonably describe” the records sought with sufficient particularity. 5 U.S.C § 552(a)(3)(A); *Judicial Watch, Inc. v. Exp.-Imp. Bank*, 108 F. Supp. 2d 19, 27-28 (D.D.C. 2000). As such, the agency would require additional specificity – in narrowing down your request - in order to conduct any searches. As it appears that you have attempted to reach out to ICE FOIA in order to discuss issues with your request, ICE has determined to reopen your request in its discretion, so that you may explore ways of narrowing down your request with ICE FOIA’s assistance. The ICE FOIA Office will contact you directly regarding this issue.

This decision is the final action of ICE concerning your FOIA request. Inasmuch as you consider this to be a denial of your appeal, you may obtain judicial review of this decision pursuant to the provisions of 5 U.S.C. § 552(a)(4)(B) in the United States District Court in the district in which you reside or have a principal place of business, or in which the agency records are situated, or in the District of Columbia.

The Office of Government Information Services (OGIS) also mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you wish to contact OGIS, you may email them at ogis@nara.gov or call 1-877-684-6448.

Should you have any questions regarding this appeal closure, please contact ICE at ice-foia@dhs.gov. In the subject line of the email, please include the word “appeal,” the appeal number, which is **2019-ICAP-00165**, and the FOIA case number, which is **2018-ICFO-45234**.

Sincerely,

Alexandra Ellis

For:

Shiraz Panthaky, Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security